

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ APR 13 2010 ★

JAMES MCMILLAN, JR.,

Plaintiff,

- against -

CITY OF NEW YORK

Defendants.

BROOKLYN OFFICE

MEMORANDUM
AND ORDER

08-CV-2887

03-CV-6049

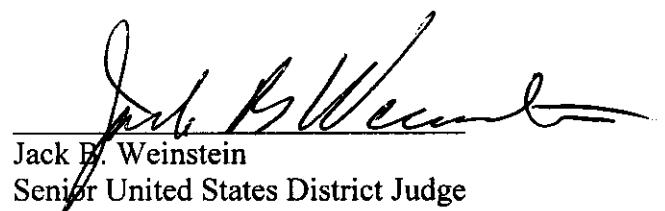
JACK B. WEINSTEIN, Senior United States District Judge:

Evan Torgan, Esq. and his client, the plaintiff, James McMillan, Jr., appeal from the magistrate judge's Report and Recommendation. *See* Report, Mar. 4, 2010, Docket Entry No. 91. Following briefing and argument of the appeal, this order supersedes any prior order and judgment relating to fees.

1. The finding that counsel for plaintiff acted ethically and tried the case with great skill is affirmed. *See id.* at 1-9 for facts.
2. The fee in the retainer agreement is confirmed and supported by the client as one he freely agreed to and now wishes to pay in full. *Id.* at 12 n.2. It is approved by the court as appropriate and payable at one-third of the net recovery. New York's statutory limitations on fees are not applicable. *But cf. id.* at 14.
3. In view of pending litigation on sharing of fees, *see ¶¶ 4 and 5, infra*, and the client's insistence on paying the fee in full, a limitation on, or a reduction of, the fee is not required.

4. There is pending litigation over claims for a portion of the fee by attorneys who allegedly prosecuted the successful liability phase of the Staten Island Ferry crash litigation. Their work allegedly resulted in rejection of New York City's claim of limited liability under maritime law. *See id.* at 16 n.4. The benefits of that aspect of this quasi-class action litigation allegedly accrued to hundreds of injured claimants, including the client.
5. Twenty percent of the net recovery shall be paid as a fee forthwith to counsel for the plaintiff. An additional portion of the fee, amounting to thirteen percent of the net recovery, shall be held in escrow by counsel for the plaintiff pending completion of the litigation over a fee "that may be awarded[, if any,] to counsel who handled the liability litigation." *Id.* The magistrate judge may reduce the amount held in escrow.

SO ORDERED.



Jack B. Weinstein
Senior United States District Judge

Date: April 8, 2010
Brooklyn, New York